Albertson's, Inc. *and* **Barbara J. Miller, Petitioner** *and* **Kathy M. Wright, Petitioner and United Food and Commercial Workers Union, District Local No. 1614, Chartered by United Food and Commercial Workers International Union, AFL–CIO, CLC.** Cases 19–RD–1907 and 19–RD–1908

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held 13 January 1983. On 26 January 1983 the Regional Director for Region 19 issued a Decision and Order dismissing the instant petitions, finding that, notwithstanding the Employer's timely withdrawal from a multiemployer bargaining association, there has been a historical merger of the Employer's stores covered under the past agreements with the Union and therefore the decertification petitions for two separate stores in Boise, Idaho, are inappropriate as not being coextensive with the scope of the contract. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Petitioners filed a timely request for review of the Regional Director's decision contending, inter alia, that no multistore unit exists and that petitioned-for single-store units are appropriate. The Union filed an opposition to the Petitioners' request for review.

By telegraphic order dated 27 April 1983, the Board, with then Member Jenkins dissenting, granted the Petitioners' request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this proceeding and finds, in agreement with the Petitioners, that the petitioned-for single-store units are appropriate.

The Employer, a Delaware corporation, operates approximately 400 supermarkets in several States, including Idaho. The Employer's Idaho Division comprises approximately 32 stores in Idaho, Nevada, and Oregon. Of the 21 stores in the State of Idaho, 9 are in Boise and 3 are within 25 miles of Boise. Although the Idaho Division office staff provides supervisory and support services to the stores, each store within the division has a store director and department heads who hire, fire, train, and direct the employees working at each store and who are held responsible for the profitability of the store.

For more than 15 years, the Employer and the Union have been parties to successive collective-bargaining agreements covering the Employer's Boise area stores at which the Union had demonstrated majority status. Collective-bargaining was conducted on a multiemployer basis between the Union, the Employer, and five other employers. Each employer executed a separate document, and addendums, supplements, and letters of understanding addressing unique circumstances of different employers and separate stores also were executed. Ratification of the collective-bargaining agreements was accomplished by elections in which all covered employees of all the employers participated jointly.

Of the Employer's 12 Boise area stores, 6 stores in Boise and 1 store in Nampa, Idaho, were covered by the multiemployer contracts. Most of these stores were covered by the successive multiemployer contracts for over 15 years. The Union and the Employer added some of the newer stores to the stores involved in the multiemployer bargaining upon the Union's demonstration of majority status.[1] In this manner the then-existing contract coverage was extended to two stores, including the one involved in Case 19–RD–1908, in the late 1970's. About the same time, the Union lost a Board-conducted election at one new store and failed to achieve majority status at another; both of these Boise area stores remain unrepresented.

The Employer's Boise and Nampa stores covered by the prior agreements with the Union[2] are not coextensive with any geographic or administrative subdivision of the Employer. Transfers between stores in the Boise area are infrequent and must be approved by the local management of each store involved. As noted above, management personnel at each store possess and exercise substantial autonomy with respect to day-to-day labor relations matters.

By letters dated 1 December 1982, the Employer timely withdrew from the multiemployer association and informed the Union that it intended to negotiate individual contracts for each store. The Union responded, in a letter dated 7 December 1982, that it considered the appropriate unit to be composed of all of the Employer's stores located in the geographical area covered by the multiemployer contract.

As indicated, the Regional Director found that a multistore unit was established during the 15 years

[1] The multiemployer contract does not contain an "add-on" clause. Cf. *S. B. Rest of Framingham, Inc.*, 221 NLRB 506 (1975); *Houston Division of the Kroger Co.*, 219 NLRB 388 (1975); *General Electric Co.*, 180 NLRB 1049 (1970).

[2] The most recent agreement expired 3 February 1983.

of multiemployer bargaining and that it survived the Employer's withdrawal from the multiemployer association. While noting that the multistore unit urged by the Union might not be appropriate absent this bargaining history, he concluded that such history must be given controlling weight.[3]

At issue is whether the Employer's stores under a multiemployer agreement constitute a multistore unit after the withdrawal from multiemployer bargaining. In the circumstances here, we think not.

The seven Boise area stores formerly covered by the multiemployer contract would not be found to constitute an appropriate unit for the purposes of collective bargaining in an initial unit determination. They form less than one-fourth of the Employer's Idaho Division and only one-third of the stores in the State of Idaho. More important, other stores in the Boise area are not represented and were not covered by the multiemployer contract. Additionally, as noted, each store's management personnel hire, fire, train, and direct employees, and they control the few interstore transfers that occur. Thus, a unit consisting only of the Employer's stores previously covered by the contract would not be found appropriate under our traditional unit determination criteria.

However, as the Regional Director properly noted, relevant bargaining history may override those traditional criteria. We have long recognized and enforced agreements between employers and unions to bargain regarding groups of facilities that may not have been considered appropriate units had we been called on to make a unit determination. For example, agreements to add facilities to multifacility units on a union's showing of majority status at each facility are honored even though the resulting unit excludes facilities in the same geographical area at which the union has not achieved majority support. In those situations, our approval of such units is premised on the voluntary nature of their establishment. We require that such an agreement of the parties be demonstrated by clear and unmistakable evidence of mutual intent. Although such intent existed in this case under the prior multiemployer relationship, there is no evidence of any sort, let alone clear and unmistakable evidence, that the Employer and the Union agreed to continue to bargain on a multistore basis after the expiration of the recent agreement. To the contrary, the Employer informed the Union it intended to negotiate individual agreements for each store. In these circumstances, we do not find that the multiemployer history continues to be binding on the stores previously covered by those agreements.[4]

The factors considered by employers, unions, and employees in deciding whether to agree to bargaining on a multiemployer basis may differ from those considered by those same parties when deciding whether to bargain in a unit composed of several facilities of just one employer.[5] Once the Employer timely withdrew from the multiemployer group, a new determination of the appropriate unit for bargaining became necessary, particularly where, as here, there is no geographic or administrative congruence between the prior contract and the Employer's operations and no showing of a separate community of interest among those employees, apart from the prior bargaining history.

Accordingly, as the Employer's employees who are represented by the Union do not constitute a separate contractual unit or one in which the Employer currently recognizes the Union such as might serve to bar the instant decertification petitions, the petitioned-for single-store units are presumptively appropriate and the dismissal of the petitions was improper.

Accordingly, we will reinstate the petitions and remand this consolidated case to the Regional Director for further processing.

ORDER

The petitions are reinstated and the case is remanded to the Regional Director for further appropriate action.

[3] See, e.g., *Anheuser-Busch*, 246 NLRB 29 (1979).

[4] Contrary to the Regional Director, we do not find that *Anheuser-Busch*, supra, and *White-Westinghouse Corp.*, 229 NLRB 667 (1977), support his conclusion. Neither case involved prior multiplant bargaining on a multiemployer level. In both of those cases, among other distinguishing factors, the employers continued to bargain on a multiplant basis with the respective unions. Here, once the Employer withdrew from the multiemployer association it made known to the Union its intention to bargain for single-store contracts.

[5] For example an employer may join in multiemployer bargaining for various reasons including greater bargaining strength or expertise, competitive factors, or other considerations. The manner in which newly opened facilities came under the coverage of the former agreements may not be the same as would exist if there were separate agreements with the Union. Thus, the manner of grouping of the employer's facilities under the multiemployer agreement should not be controlling in the single-employer context.